

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

No. CR S-93-0016 LKK EFB

vs.

DONALD MARUTZ,

Movant.

ORDER

_____/

Movant was convicted for federal offenses relating to methamphetamine. He moved to vacate or set aside his sentence, on the ground of ineffective assistance of counsel. On February 4, 2009, magistrate Brennan issued findings and recommendations denying movant's motion on the merits. Objections were to be filed within 20 days. Movant, represented by the federal defender, requested an extension of time, which was granted. The day after that extension expired, no objections had been filed, and this court was prepared to adopt the F&R. Movant then requested an additional extension, without indicating what objections, if any, would be raised. This court stated that "Because this is the second such request, because the request is untimely, and in light of the undersigned's evaluation of the merits of the magistrate's findings and recommendations, the court denies movant's request for additional time." The court then adopted the F&Rs in full.


1 Movant filed a notice of appeal of the order adopting the F&R. Neither this notice nor
2 anything else on our docket or the Ninth Circuit's docket indicates the ground for this appeal.
3 The Ninth Circuit docket clerk caused the case to be automatically remanded for a determination
4 of whether to issue a certificate of appealability. The applicant bears the burden of showing
5 substantial denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and it appears that applicant
6 has not even attempted to make this showing.

7 In sum, "the applicant has [not] made a substantial showing of the denial of a
8 constitutional right," 28 U.S.C. 2253(c)(2).

9 Accordingly, a certificate of appealability should not issue at this time.

10 IT IS SO ORDERED.

11 DATED: July 1, 2009.

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14 LAWRENCE K. KARLTON
15 SENIOR JUDGE
16 UNITED STATES DISTRICT COURT
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